

68th LEGISLATURE—REGULAR SESSION

PROPOSED CONSTITUTIONAL AMENDMENTS—STATE
COMMISSION ON JUDICIAL CONDUCT—MEMBERSHIP,
AUTHORITY, AND PROCEDURE

H. J. R. No. 4

A JOINT RESOLUTION

proposing a constitutional amendment relating to the State Commission on Judicial Conduct and the authority and procedure to discipline active judges, certain retired and former judges, and certain masters and magistrates of the courts.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article V, Section 1-a, Subsection (2), of the Texas Constitution be amended to read as follows:

(2) The name of the State Judicial Qualifications Commission is changed to the State Commission on Judicial Conduct. The Commission consists of eleven (11) members, to wit: (i) one (1) Justice [two-(2)-Justices] of a Court [Courts] of [Civil] Appeals; (ii) one (1) District Judge; [two-(2)-District-Judges]; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) four (4) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; [and] (v) one (1) Justice of the Peace; (vi) one (1) Judge of a Municipal Court; and, (vii) one (1) Judge of a County Court at Law; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership, except that the Justice of the Peace and the Judges of a Municipal Court and or a County Court at Law shall be selected at large without regard to whether they reside or hold [he-resides-or-holds] a judgeship in

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the same Supreme Judicial District as another member of the Commission. Commissioners of classes (i), and (ii), and (vii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iiii) by appointment of the Governor with advice and consent of the Senate, and the commissioners [~~commissioner~~] of classes [~~class~~] (v) and (vi) by appointment of the Supreme Court as provided by law, with the advice and consent of the Senate. [~~from a list of five (5) names submitted by the executive committee of the Justice of the Peace and Constables Association of Texas, with the advice and consent of the Senate. The initial term of the commissioner of class (v) and the fourth commissioner of class (iiii) added by this amendment terminates on November 19, 1979. Each person holding office as a member of the Commission on the effective date of this amendment continues to hold the office for the term for which he was appointed.~~]

SECTION 2. That Article V, Section 1-a, Subsection (6), of the Texas Constitution be amended by amending Paragraph A and adding Paragraph C to read as follows:

A. Any Justice or Judge of the courts established by this Constitution or [~~Appellate Courts and District and Criminal District Courts, and any County Judge, and any Judge of a County Court at Law, a Court of Domestic Relations, a Juvenile Court, a Probate Court, or a Corporation or Municipal Court, and any Justice of the Peace, and any Judge or presiding officer of any special court~~] created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that [~~which~~]

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is clearly inconsistent with the proper performance of his [said] duties or casts public discredit upon the judiciary or administration of justice. [r--er] Any [any] person holding such office may be disciplined or censured, in lieu of removal from office, as [under-procedures] provided [for] by this section [the Legislature]. Any person holding an office specified [named] in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense[r--er] or charged with a misdemeanor involving official misconduct. On [en] the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that [which] is clearly inconsistent with the proper performance of his duties or [which] casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

C. The law relating to the removal, discipline, suspension, or censure of a Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in this Constitution applies to a master or magistrate appointed as provided by law to serve a trial court of this State and to a retired or former Judge who continues as a judicial officer subject to an assignment to sit on a court of this State. Under the law relating to the removal of an active Justice or Judge, the Commission and the review tribunal may prohibit a retired or former

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Judge from holding judicial office in the future or from sitting on a court of this State by assignment.

SECTION 3. That Article V, Section 1-a, Subsections (8) through (12), of the Texas Constitution be amended to read as follows:

(8) After such investigation as it deems necessary, the Commission may in its discretion issue a private or public admonition, warning, reprimand, or requirement that the person obtain additional training or education, or if the Commission determines that the situation merits such action, it may institute formal proceedings and order a formal hearing to be held before it concerning the public censure, removal, or retirement of a person holding an office or position specified [named] in [Paragraph-A-of] Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of [Sixth] Appeals, or retired Judge or Justice of the Court of Criminal Appeals or the Supreme Court, as a Master to hear and take evidence in any such matter, and to report thereon to the Commission. The Master shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public censure or it shall recommend to a review tribunal [the--Supreme Court] the removal[7] or retirement, as the case may be, of the person in question holding an office or position specified [named] in [Paragraph--A--of] Subsection (6) of this Section and shall thereupon file with the tribunal [Clerk-of-the-Supreme--Court] the entire record before the Commission.

(9) A tribunal to review the Commission's recommendation for the removal or retirement of a person holding an office or position specified in Subsection (6) of this Section is composed of seven

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(7) Justices or Judges of the Courts of Appeals who are selected by lot by the Chief Justice of the Supreme Court. Each Court of Appeals shall designate one of its members for inclusion in the list from which the selection is made. Service on the tribunal shall be considered part of the official duties of a judge, and no additional compensation may be paid for such service. The review tribunal [Supreme-Court] shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence. Within 90 days after the date on which the record is filed with the review tribunal, it [and] shall order public censure, retirement or removal, as it finds just and proper, or wholly reject the recommendation. A Justice, Judge, Master, or Magistrate may appeal a decision of the review tribunal to the Supreme Court under the substantial evidence rule. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The review tribunal [Supreme-Court], in an order for involuntary retirement for disability or an order for removal, may prohibit such person from holding judicial office in the future. The rights of an incumbent so retired to retirement benefits shall be the same as if his retirement had been voluntary.

(10) All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by law, and the filing of papers with, and the giving of testimony before[7] the Commission or a[7] Master [~~or--the--Supreme Court~~] shall be privileged, unless otherwise provided by law[7 ~~provided-that-upon-being-filed-in--the--Supreme--Court--the--record loses--its--confidential--character~~]. However, the Commission may issue a public statement through its executive director or its Chairman at any time during any of its proceedings under this Section when sources other than the Commission cause notoriety concerning a Judge or the Commission itself and the Commission

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determines that the best interests of a Judge or of the public will be served by issuing the statement.

(11) The Supreme Court shall by rule provide for the procedure before the Commission, Masters, review tribunal, and the Supreme Court. Such rule shall provide the right of discovery of evidence to a Justice, Judge, Master, or Magistrate after formal proceedings are instituted and shall afford to any person holding an office or position specified [named] in [Paragraph--A--of] Subsection (6) of this Section, against whom a proceeding is instituted to cause his retirement or removal, due process of law for the procedure before the Commission, Masters, review tribunal, and the Supreme Court in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding is entitled to due process of law, regardless of whether or not the interest of the person holding an office or position specified [named] in [Paragraph--A--of] Subsection (6) of this Section in remaining in active status is considered to be a right or a privilege. Due process shall include the right to notice, counsel, hearing, confrontation of his accusers, and all such other incidents of due process as are ordinarily available in proceedings whether or not misfeasance is charged, upon proof of which a penalty may be imposed.

(12) No person holding an office specified [named] in [Paragraph-A-of] Subsection (6) of this Section shall sit as a member of the Commission in any proceeding involving his own suspension, discipline, censure, retirement or removal. [~~A recommendation--of--the--Commission--for--the--suspension, censure, retirement, or removal of a Justice of the Supreme Court--shall--be determined--by--a--tribunal--of--seven--(7)--Court of Civil Appeals Justices selected by lot to serve in place of the Supreme Court.~~]

SECTION 4. That Article V, Section 1-a, of the Texas Constitution be amended by adding Subsection (14) to read as follows:

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(14) The Legislature may promulgate laws in furtherance of this Section that are not inconsistent with its provisions.

SECTION 5. That the following temporary provision be added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by H.J.R. No. 4, 68th Legislature, Regular Session, 1983, and expires January 1, 1988.

(b) The constitutional amendment takes effect January 1, 1985.

(c) The initial term of the commissioner of class (v) added by amendment in 1977 expired on November 19, 1979. The initial term of the commissioner of class (vi) and (vii) expires on November 19, 1985.

(d) Each person holding office as a member of the Commission on Judicial Conduct on January 1, 1985, continues to hold the office for the term for which he was appointed.

(e) The offices of the first commissioner of class (i) and the first commissioner of class (ii) whose terms expire after January 1, 1985, are abolished on the expiration of the terms.

(f) Changes made in the constitution by this amendment do not apply to investigations and formal proceedings where the investigation of judicial conduct by the commission began before January 1, 1985.

SECTION 6. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 6, 1984. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment relating to the membership of the State Commission on Judicial Conduct and the authority and procedure to discipline active judges, certain

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retired and former judges, and certain masters and magistrates of the courts."

Passed by the House on March 28, 1983: Yeas 141, Nays 1, 1 present, not voting; passed by the Senate on May 25, 1983: Yeas 24, Nays 0.

Filed without signature.

Filed with the Secretary of State, May 27, 1988.

PROPOSED CONSTITUTIONAL AMENDMENTS—COLLEGES AND UNIVERSITIES—FUNDING

H. J. R. No. 19

A JOINT RESOLUTION

proposing a constitutional amendment to provide funds for the support of higher education and to restructure the permanent university fund.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article VII of the Texas Constitution be amended by adding Section 17 to read as follows:

Sec. 17. (a) In the fiscal year beginning September 1, 1985, and each fiscal year thereafter, there is hereby appropriated out of the first money coming into the state treasury not otherwise appropriated by the constitution \$100 million to be used by eligible agencies and institutions of higher education for the purpose of acquiring land either with or without permanent improvements, constructing and equipping buildings or other permanent improvements, major repair or rehabilitation of buildings or other permanent improvements, and acquisition of capital equipment, library books and library materials. During the regular session of the legislature that is nearest, but preceding, the beginning of each fifth fiscal year dating from September 1, 1985, the legislature may by two-thirds vote of the membership of each house adjust the amount of the constitutional appropriation for the ensuing five years but may not adjust the appropriation in such a

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